

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

DOUGLAS HANDSHOE

PLAINTIFF

v.

CIVIL ACTION NO. 1:15cv382-HSO-JCG

**VAUGHN PERRET, CHARLES
LEARY & DANIEL ABEL, D/B/A
TROUT POINT LODGE LTD OF
NOVA SCOTIA & IN THEIR
INDIVIDUAL CAPACITIES,
PROGRESS MEDIA GROUP
LIMITED, MARILYN SMULDERS,
TORSTAR CORPORATION,
NATIONAL GEOGRAPHIC
SOCIETY INC., XYZ FOUNDATION
& JOHN DOES 1-50**

DEFENDANTS

NATIONAL GEOGRAPHIC SOCIETY’S MOTION TO DISMISS

Defendant National Geographic Society (“NGS”) respectfully requests that the Court dismiss the Complaint filed by Douglas Handshoe pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6).

As explained in the accompanying memorandum, which is incorporated herein by reference, the Amended Complaint should be dismissed for at least three independent reasons. First, it should be dismissed under Fed. R. Civ. P. 12(b)(1) and 12(b)(6) because, by Plaintiff’s own admission, he does not have standing to bring a claim against NGS, having suffered no injury or been personally accused of violating any copyright. Second, the Amended Complaint should be dismissed under Fed. R. Civ. P. 12(b)(6) as a shotgun pleading that fails to give fair notice to NGS as to what allegations are being made against it individually. Third, the Amended Complaint should be dismissed because the handful of specific allegations regarding NGS that

can be gleaned from the Amended Complaint are patently insufficient to support Plaintiff's claims against NGS for at least the following reasons:

- The Amended Complaint fails to adequately plead at least three essential elements of a claim under 17 U.S.C. § 512(f), requiring the dismissal of Count 5;
- Plaintiff's attempted civil conspiracy claim under Count 9 fails both because such a claim is preempted by the Federal Copyright Act, and because the Amended Complaint does not plausibly allege the fundamental requirement of an agreement between NGS and its alleged co-conspirators; and
- There is no actual case or controversy to support Plaintiff's request for a declaratory judgment and, consequently, this Court lacks subject matter jurisdiction over Count 10.

Because the Amended Complaint is deficient as a matter of law in both its form and content, NGS's Motion to Dismiss should be granted.

Respectfully submitted,

DATED: January 5, 2016

/s/ Jonathan P. Dyal
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Attorneys for Defendant National Geographic Society

CERTIFICATE OF SERVICE

I, the undersigned counsel, do hereby certify that I have this day electronically filed the foregoing with the Clerk of Court using the ECF system, which sent notification of such filing to all counsel of record who have registered with the ECF system.

This the 5th day of January, 2016.

/s/ Jonathan P. Dyal